



Services e-commerce in the WTO

PIFS Training in E-commerce Rules

1 April 2022

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Outline



1. Services matter for e-commerce

- Making e-commerce happen – the services infrastructure
- Existing WTO framework

2. ... and e-commerce matters for services

- Digitally-enabled services

3. Discussions in the WTO

- Council for Trade in Services
- Joint Statement Initiative

4. Concluding observations



Services infrastructure for e-commerce

– making it happen



Services form the backbone of the e-commerce “supply chain”:

- Consumer accesses the internet
→ **Communication service**
- Performs an online search for a product
→ **Computer service**
- Clicks on a link with product information
→ **Advertising service**
- Orders a product from a website
→ **Distribution service**
- Pays for the product
→ **Financial service**
- Downloads the **product** (**service/good**) or has it shipped
→ **Communication/postal & courier/transport servi**



Services infrastructure for e-commerce



Telecom networks & computer services

Distribution platforms

Payment mechanisms

Transport and logistics networks

Online delivery

SERVICES/GOODS

Physical delivery
GOODS



Services infrastructure for e-commerce and trade



- Services form the backbone of e-commerce:
 - Internet/broadband are **catalysts**
 - **Services trade policies** impact the development of the digital infrastructure
- Trade policies in “e-commerce enabling” services **impact the development of the digital infrastructure** – restrictive policies may **constrain** the development of the digital economy



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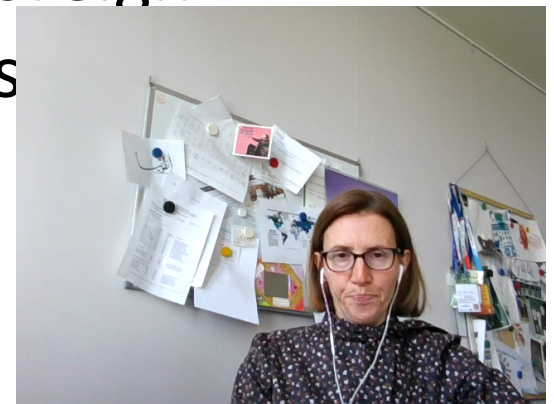
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Existing WTO framework



1. WTO Members have undertaken **legally binding commitments** under the General Agreement on Trade in Services (GATS) in **relevant sectors**
→ these guarantee access conditions and may be used to commit to services policies that are conducive to greater digital connectivity
2. The GATS also contains **specific rules** that are of particular relevance to e-commerce, in the telecommunication sector
3. Temporary access for certain categories of foreign individuals supplying services (**mode 4**) is also in commitments



1. Role of GATS commitments

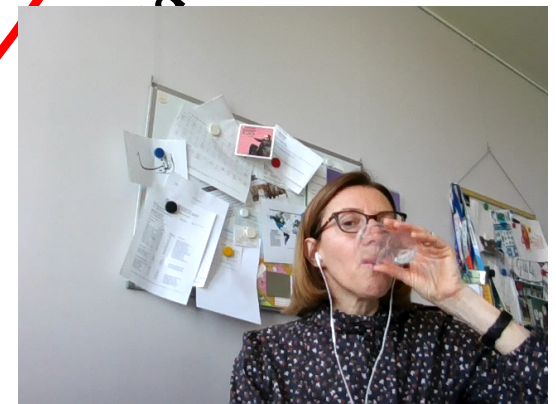
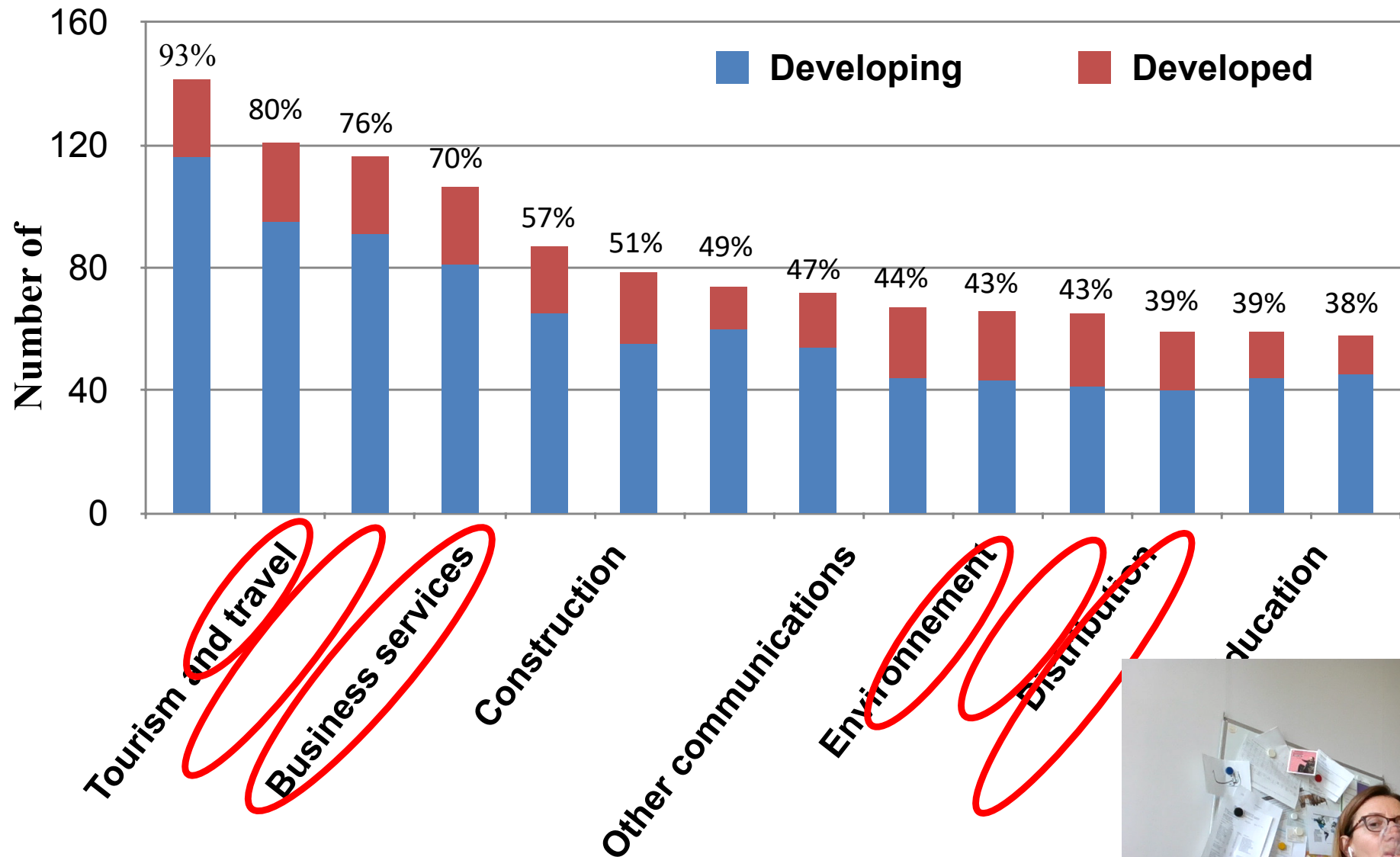


- Commitments can:
 - Ensure transparency and predictability
 - Enhance the credibility of policies, as they guarantee committed levels of openness
 - Encourage competition
 - Encourage investment
- However, WTO Members have so far made uneven use of GATS commitments to reduce trade barriers or even to guarantee existing levels of openness for commerce infrastructure

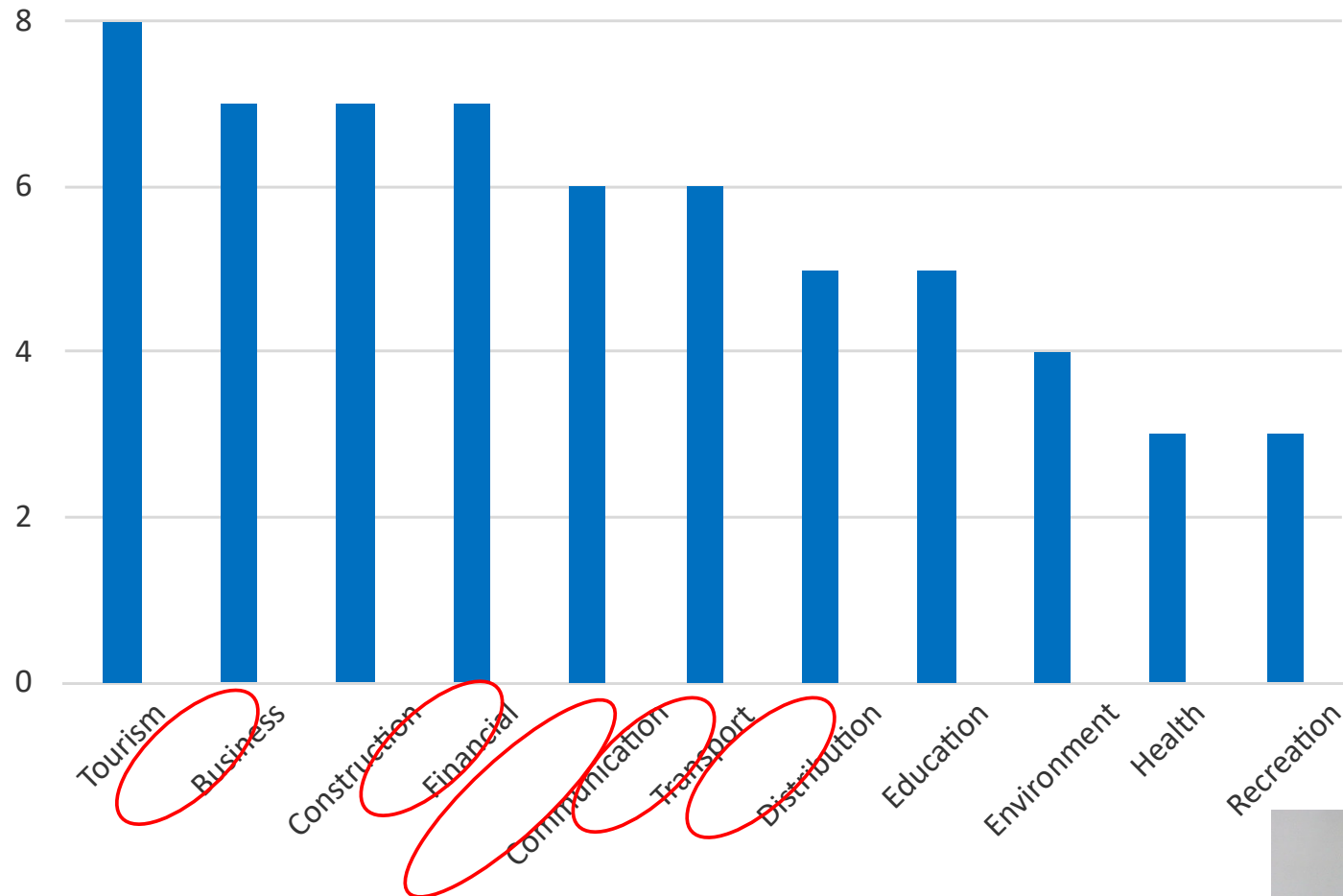


Sectoral coverage of GATS commitments

April 2022



GATS commitments of 8 PIF WTO Members



GATS commitments in “e-com infrastructure” sub-sectors





GATS commitments – Production chain “issues”...

- **Distribution** services – few commitments, retail level regulations aimed at brick-and-mortar models
- **Payments** – Not fully globalized
- **Transport and logistics** – air transport carved out of GATS, other transport sectors relatively uncommitted (e.g. trucking)
- **Express delivery** – Postal and courier services not fully competitive, affected by transport re



2. Specific GATS rules of particular e-commerce relevance

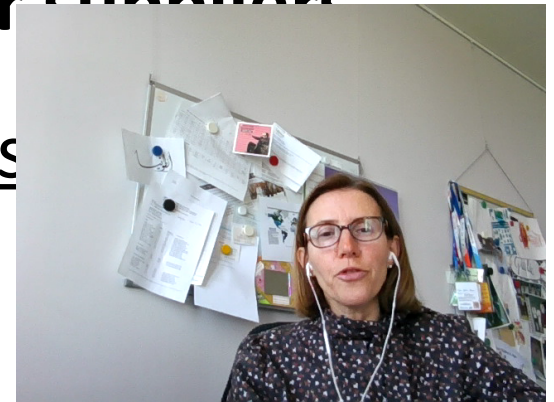


A. GATS Annex on Basic Telecommunications

- Disciplines the behaviour of “**public**” telecom providers
- Provides guarantees to users

B. Telecom Reference Paper

- Disciplines the behaviour of “**major suppliers**”
- Provides guarantees to competitors



A. GATS Annex on Telecommunications

“Public” telecom providers



- General obligation to ensure that **reasonable** and **non-discriminatory access to** and **use of** public telecom transport networks and services is guaranteed to **suppliers of committed services**
- Obligation concerns “**public**” telecom providers – i.e. those required, explicitly or in effect, to make basic telecom services **generally available to the public** – irrespective of ownership and market structure
- Greater **specificity** than GATS framework provisions (e.g. transparency also for measures by operators)





B. The Reference Paper (1/2)

“Major telecom suppliers”

- Contains pro-competitive regulatory disciplines that may be inscribed in **commitments** for basic telecom services
- Currently the case for over 100 Members – and 5 PIF WTO Members
- Disciplines “major suppliers”, i.e. suppliers with **control over essential facilities** or a **dom position** in the relevant market for basic telecommunications services





B. The Reference Paper (2/2)

“Major telecom suppliers”

Disciplines:

- **Competition** - avoid abuse of dominance
- **Interconnection** - fairness guarantees
- **Regulator** - independent of operators
- **Universal service** – competition-friendly
- **Finite resources** - administered fairly (e.g. spectrum, numbering)
- **Licensing** - added transparency



Role of the GATS telecom competition safeguards



GATS disciplines of the Annex & Reference Paper:

- Help maintain lower costs and innovation in ICT infrastructure services
- Help facilitate market entry of new players
- Ensure that businesses can access the services they need to participate in the digital economy



3. GATS mode 4 commitments



- In their GATS schedules Members have guaranteed temporary access for certain categories of foreign individuals supplying services (**mode 4**)
- **Categories** generally include Intra-corporate Transferees and Business Visitors, more rarely for “footloose” employees of service suppliers (CSS) or self-employed service professionals (IP)
- Usually, identical access in **all service sectors** included in a Member’s schedule
- **Durations** of stay – 3 months to 5 years
- GATS **carve outs** (permanent residence/en citizenship and access to employment mar



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Digitally-enabled services



- Services are not only enablers of e-commerce, they are also **enabled** by digital technologies
- Technological advances have **enhanced the cross-border tradability** of services
- This is especially important for **information-intensive** services (e.g. computer services, financial services, professional services, audio-visual services)
- But digital technologies have also **reduced costs** for services trade **more generally**, e.g. for services supplied through “establishment”



E-commerce enabled services



- Some of the services amenable to be online supply:
 - Business services (including computer-related services)
 - Communication (telecom, audio-visual services)
 - Education services
 - Financial services
 - Health and social services
 - Tourism, e.g. for reservations
 - Recreational, cultural and entertainment services
- With GATS commitments, access to foreign markets is guaranteed

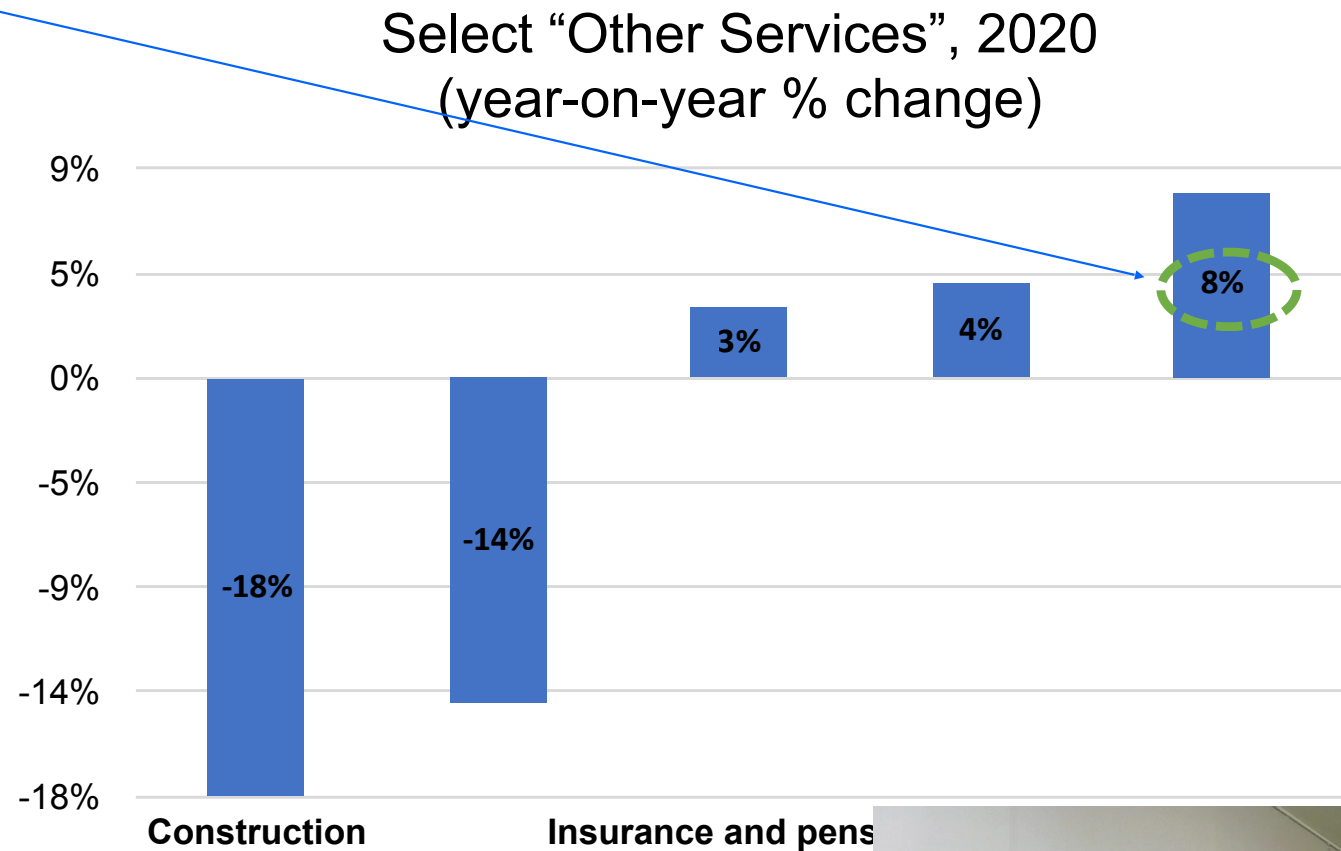


Services traded on-line during COVID



In 2020, services trade fell by 21%, but trade in **computer services** grew by 8%

% of **online** retail sales in total retail sales increased from 16% in 2019 to 19% in 2020



Sources: WTO-UNCTAD estim



What happened with COVID?



- Social distancing and mobility-related restrictions* → shift to **online supply/“e-commerce”**
- Governments took **measures to facilitate** this trade, such as:
 - making more capacity available to telecom operators
 - easing consumer access to online education, tele-health
- Technology and connectivity **disparities** were brought further to the fore
- **Importance** of infrastructural services and trade in these sectors for growth, resilience and re

* Over 110'000 travel restrictions issued worldwide (IOM, Nov 20



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WTO discussions – Council for Trade in Services



- Discussions under the **Work Programme**. Most recently:
 - Many Members shared information about their respective **initiatives to enhance digital capabilities** of businesses and consumers, domestically and internationally (JOB/SERV/CTS/4)
 - Some Members updated the Council on the **latest e-commerce related developments** (e.g. e-payments, logistics, on-line distribution)
 - Some others called for discussions to focus on the **development dimension** and the challenges faced by developing countries in the e-commerce sphere
 - Divergent views were expressed on the **Moratorium** [on the definition of *(content?); scope (services?) and impact (revenue?)*]
- Discussions of **Specific Trade Concerns** relating to e-commerce (e.g. cybersecurity, 5G networks,



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Joint Statement Initiative



- 12/2017 (MC11) - 71 Members began “**exploratory work**” on the “trade-related aspects of e-commerce”
- 1/2019 – **Negotiations** started, coordinated by Australia, Japan and Singapore:
 - Based on Members’ text submissions, often drawn from RTAs
 - Aim: High-standard outcome, maximum participation, building on WTO rules
- Currently: **86 participants***, but open to all Members

* Albania; Argentina; Australia; Austria; Bahrain; Belgium; Benin; Brazil; Brunei Darussalam; Bulgaria; Cameroon; Canada; Chile; China; Colombia; Costa Rica; Côte d’Ivoire; Croatia; Cyprus; Czech Republic; El Salvador; Estonia; Finland; France; Georgia; Germany; Greece; Guatemala; Honduras; Hong Kong; Iceland; Indonesia; Ireland; Israel; Italy; Japan; Kazakhstan; Kenya; Republic of Korea; Kuwait; Liechtenstein; Lithuania; Luxembourg; Malaysia; Malta; Mexico; Moldova; Mongolia; Montenegro; New Zealand; Nicaragua; Nigeria; North Macedonia; Norway; Panama; Paraguay; Peru; Philippines; Romania; Russian Federation; Saudi Arabia; Singapore; Slovak Republic; Slovenia; Spain; Sweden; Taipei; Thailand; Turkey; Ukraine; United Arab Emirates; United Kingdom; United States; Uruguay.



JSI discussions organized under 6 broad themes



Enabling e-commerce

Facilitating electronic transactions and digital trade (e.g. e-signatures, e-contracts, paperless trading)

Openness

Non-discrimination, flow of information, customs duties, access to internet and data

Trust

Consumer protection, privacy, business trust

Cross-cutting issues

Transparency, cybersecurity, capacity building

Telecommunications

GATS Telecom Reference Paper

Market access

Services

E-co



JSI – Services MA (1/2)



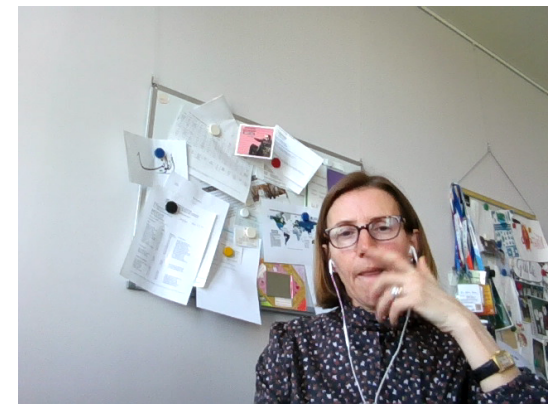
- Collectively, ~30 proponents seek **new**, or **improved** or **fully liberal** (except for mode 4) commitments in the following sectors:
 - Computer and related services
 - Other business services – Advertising and technical testing services
 - Courier services
 - Telecom services (inclusion of the Reference Paper)
 - Distribution services (commission agents', wholesale, retail)
 - Financial services – Payment services
 - Maritime transport – Freight
 - Air transport – 3 subsectors
 - Rail transport – Freight
 - Road transport – Freight
 - Transport auxiliary services – Cargo handling, storage & warehousing agency services



JSI – Services MA (2/2)



- Focus is on “**enabling**” services – no manifest interest in “enabled” services
- Accounts of the small-group discussions point to **differing views**:
 - Sectors of focus
 - Challenge of including MA
 - Relationship between services commitments and the architecture of the JSI outcome
- **Way forward** – possibility to have requests for new sectors, continuing discussions on the scope to ensure focus and balance.



JSI – E-commerce related personnel



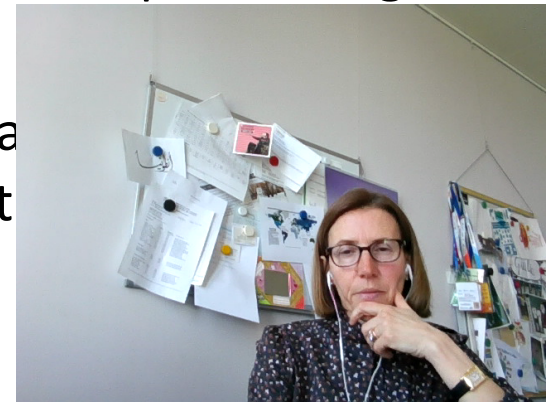
- One proponent calls on participants, in accordance with domestic rules, to:
 - encourage the movement of electronic commerce-related personnel
 - permit temporary entry of such personnel **associated with a commercial presence**
 - Categories include ICT, BV and CSS
- Proposal for binding obligations related to:
 - Publication of relevant measures
 - Expeditious processing of entry applications
 - Notification of steps in application process
 - Setting of fees
- Reconfirms the GATS carve-outs related to mode regarding citizenship, permanent residence or en access to the Member's employment market)
- Proposals of a similar nature in the IFD JSI



JSI – Telecom Reference Paper (1/2)



- Around 30 proponents calls for some of the provisions in the RP to be updated
- Changes sought include:
 - Additional definitions - e.g. “telecom service”, “public telecom network”, “public telecom service”)
 - Disciplines on Universal Service - e.g. process to designate US supplier, compensation of providers of US)
 - Disciplines on licensing - e.g. authorization to provide telecom services granted without formal licensing procedure
 - Disciplines on Independent Regulator – e.g. enhanced definition of “independence”, publicly accessible assigned tasks
 - Disciplines on allocation/use of scarce resources – process open, taking account of public interest
 - New disciplines on access to essential facilities, transparent access to dispute resolution (beyond only interconnect



JSI – Telecom Reference Paper (2/2)

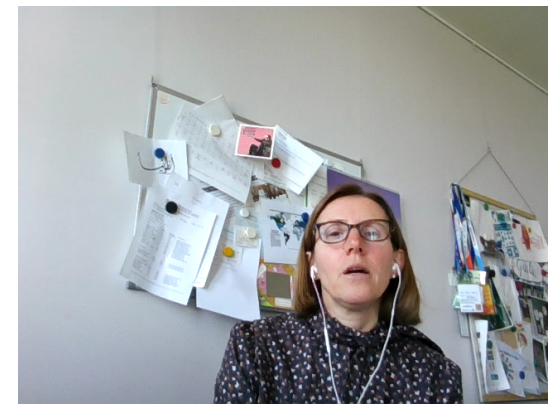
- Participants shared the view that telecommunications are essential for e-com
- Different view on:
 - the obligation to sign up to the RP
 - need for revision
 - scope of the suggested revisions
 - relationship with existing RP and legal architecture
- Creation of a small negotiating group?



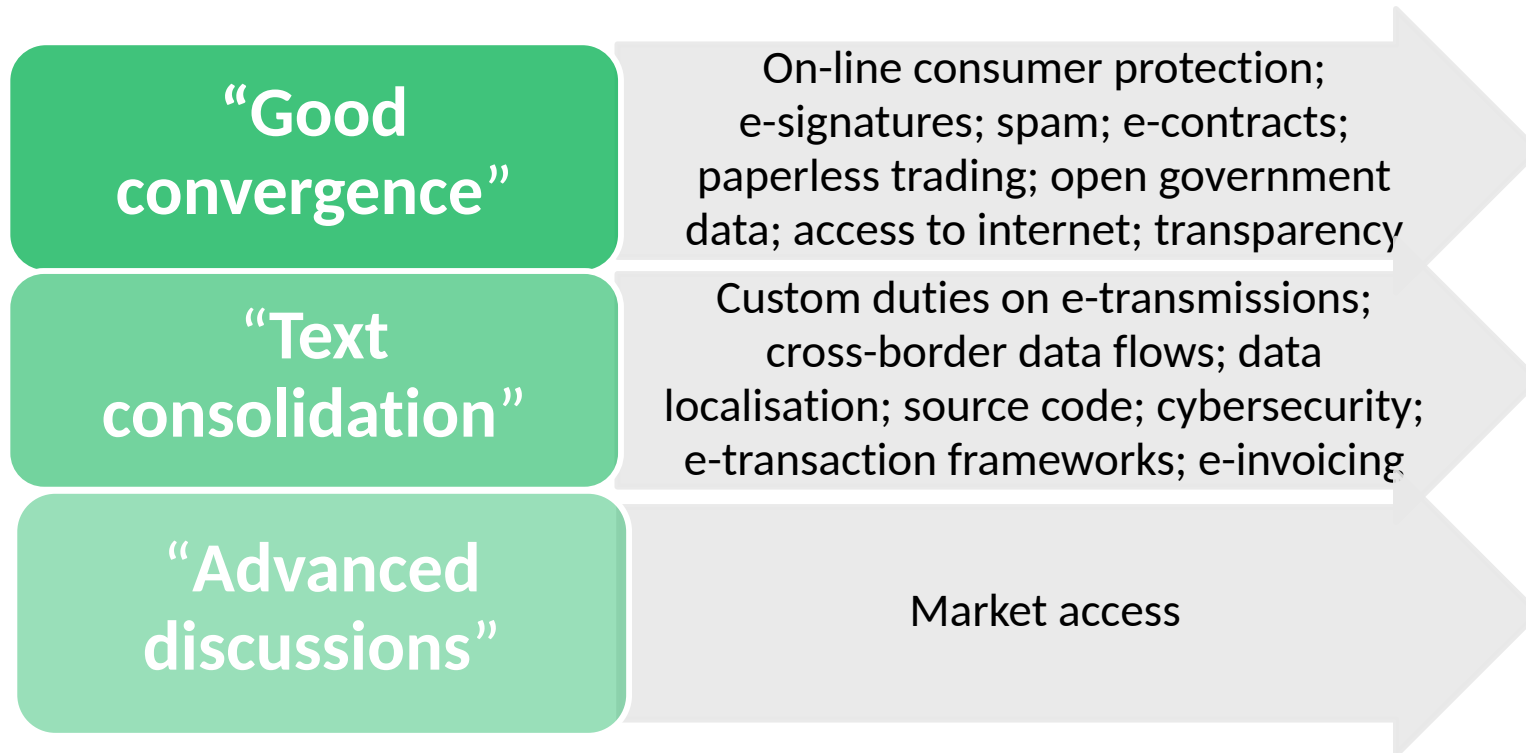
JSI – Other “services” issues



- Many of the other issues discussed in the JSI have services trade relevance, e.g.:
 - Facilitation and trust (e.g. e-signatures, e-contracts, spam, privacy, cybersecurity)
 - Flow of information (e.g. cross-border data flows, location of computing facilities)
 - Customs duties on electronic transmissions
 - Access to internet



JSI –Progress at end 2021*



- Co-conveners’ statement highlights COVID response, **data flows** and **permanent moratorium**, outreach
- Aim: to converge on most issues by **end 2022**
- *Some of the **challenges**: legal architecture, data*

*https://www.wto.org/english/news_e/news21_e/ji_ecom



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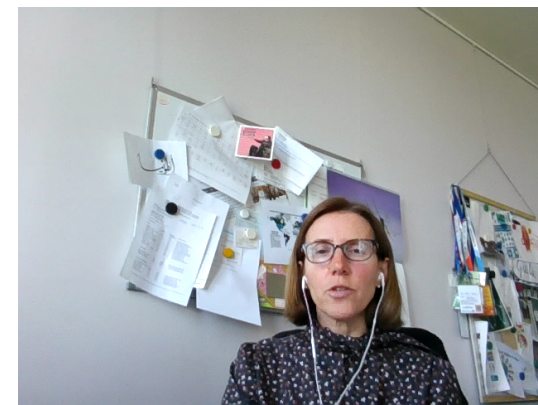
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Concluding observations



- Services are the **backbone** of e-commerce infrastructure
- The WTO/GATS enables Members to make credible market opening **commitments** in sectors that are **supportive** of an enabling framework for e-commerce
- Services-relevant WTO e-com discussions are proceeding on two fronts, one multilateral and one plurilateral
- Services are not only e-commerce enablers, they are also **amenable** to online supply





THANK YOU

